

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

RODELIO L. CATAROJA, JR.

Defendant and Appellant.

D055341

(Super. Ct. No. SCN244528)

APPEAL from a judgment of the Superior Court of San Diego County, Frances M. Devaney, Judge. Affirmed.

Rodelio L. Cataroja, Jr. waived a jury trial, and the court convicted him on all 12 felony counts against him arising from the thefts of credit cards from four women and the subsequent use of the credit cards at Target stores. Four counts were for the use of personal identifying information of another person (Pen. Code,¹ § 530.5, subd. (a)), four counts were for burglary from the Target stores (§ 459), and four counts were for grand theft of personal property from the women (§ 487, subd. (a)). The court also found

¹ All statutory designations are to the Penal Code.

against Cataroja on a prison prior (§ 667.5, subds. (b)-(i)) and a strike prior (§§ 667, subd. (b), 1170.12). The court sentenced him to a prison term totaling five years and four months. The court also imposed restitution fines.

FACTS

On January 4, 2008, Julie Puentes's purse was stolen from her car, which was parked in the garage of her home in Carlsbad. Her daughter had left the garage door open while she was outside playing. The same day, a surveillance video at a Target store in Vista showed a man, later identified as Cataroja, and a woman enter the store together,² and the woman making three separate transactions on Puentes's credit card for various items, including a Playstation 3 video game, a prepaid cell phone, and a cell phone accessory. Cataroja selected some of the items. He and the woman left the store together, and he carried part of the merchandise. The store's loss prevention specialist, Richard Thompson, was suspicious because "[n]o one comes in and blows or spends approximately \$1,000 in about ten minutes that I've seen."

On January 10, 2008, Lisa McKnight's wallet was stolen from her car when it was parked in the garage of her home in Carlsbad. She had left her garage door open while she unloaded groceries from the car. The same day, Thompson saw Cataroja and the same woman enter the Vista Target store together. Thompson initiated video surveillance, which showed the woman making several transactions on McKnight's credit card, for such items as an iPod, several phone cards, and a PlayStation 3 video game.

² The woman, Khamla Vongvichith, was originally named as a codefendant in the information against Cataroja.

Cataroja and the woman walked together throughout the store, and he selected some of the items. Cataroja and the woman left the store together, and he carried part of the merchandise.

On January 16, 2008, Anne Daleiden-Burns lost her wallet while she was out running errands in Carlsbad. That day Thompson was on duty at the Target store in Vista. After seeing Cataroja enter the store, Thompson initiated video surveillance. Cataroja made several purchases with Daleiden-Burns's credit card, for such items as a television, a PlayStation 3 video game, and prepaid phone cards.

On January 17, 2008, Wendy Paine's purse was taken from her vehicle while it was parked in the garage of her home in Carlsbad. The same day, a loss prevention specialist with a Target store in Mira Mesa became suspicious when he saw a man, later identified as Cataroja, purchase "some large ticket items," including a PlayStation 3 game and a cell phone. Cataroja paid for the purchases with Paine's credit card. About four minutes later, he used Paine's credit card again to purchase various items, including a television. Cataroja's activities were recorded on the store's surveillance video.

DISCUSSION

Appointed appellate counsel has filed a brief setting forth evidence in the superior court. Counsel presents no argument for reversal, but asks this court to review the record for error as mandated by *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), and *Anders v. California* (1967) 386 U.S. 738 (*Anders*). Pursuant to *Anders*, counsel refers to as possible, but not arguable, issues: (1) whether Cataroja's waiver of his right to a jury trial was effective; (2) whether the court properly admitted evidence of an uncharged offense

to show a common plan; and (3) whether the convictions on the 12 counts are sufficiently supported by the evidence.

We granted Cataroja permission to file a brief on his behalf, and he has done so. He does not mention the jury trial or uncharged offense issues. He contends the following issues are arguable: (1) whether the convictions on two of the counts for the use of personal information must be reversed since he did not actually use Puentes's or McKnight's credit cards at the Target store, and rather Vongvichith did while he "idly stood by"; (2) whether the four counts of burglary must be reversed because he did not break into the Target stores when they were closed for business, and Target suffered no actual loss since the purchases were covered by credit card companies; and (3) whether the four counts for grand theft of personal property must be reversed since "there was no charge of residential burglary to obtain the credit cards," and the value of the cards themselves does not exceed \$400.

As to Cataroja's first issue, the evidence amply supports his liability for the use of Puentes's and McKnight's personal information on an aiding and abetting theory. " 'All persons concerned in the commission of a crime, . . . whether they directly commit the act constituting the offense, or aid and abet in its commission, . . . are principals in any crime so committed.' [Citations.] Thus, a person who aids and abets a crime is guilty of that crime even if someone else committed some or all of the criminal acts." (*People v. McCoy* (2001) 25 Cal.4th 1111, 1116-1117.) "When a person 'chooses to become part of the criminal activity of another, she [or he] says in essence, "your acts are my

acts. . . ." (Id. at p. 1118.) Cataroja entered the Target store with Vongvichith, they shopped together during their stay, he selected certain items for purchase, he stood by her while she used the credit cards, and he left the store with her while carrying part of the merchandise.

Cataroja's second issue is likewise without merit. To be convicted of violating section 459, it was not necessary for Cataroja to have broken into the Target store when it was closed. "The crime of burglary is committed when any person enters any shop, warehouse or store with intent to commit grand or petit larceny." (*People v. Navarette* (1958) 163 Cal.App.2d 151, 152; § 459.) "California's statutory definition of burglary is broader than the common law definition. Under California law, a breaking is no longer required." (*People v. Brown* (1992) 6 Cal.App.4th 1489, 1495.) The evidence supports a finding that Cataroja intended to commit theft when he entered the two Target stores. Further, whether the Target stores suffered any actual loss is immaterial. The crime is *complete* after the defendant makes an unlawful entry with the intent to commit a felony. (*People v. Magallanes* (2009) 173 Cal.App.4th 529, 536.) The "crime of burglary can be committed without any actual taking." (*Ibid.*)

Cataroja's third issue also lacks merit because proving him guilty of residential burglary was not an element of the crime of grand theft of personal property. The elements of grand theft "are the taking of personal property [exceeding \$400 in value] from the owner, into the possession of the criminal without the consent of the owner or under a claim of right, the asportation of the subject matter, and by the specific intent to deprive the owner of his property wholly or permanently. The requisite intent may be

shown circumstantially." (*People v. Walther* (1968) 263 Cal.App.2d 310, 316; § 487, subd. (a).) Substantial evidence supports a finding Cataroja committed grand theft, as he used or aided and abetted the use of the victims' credit cards shortly after they were stolen.

Further, the value of the victims' plastic credit cards is immaterial. In arguing Cataroja committed grand theft, the prosecution properly relied on the amounts charged to the cards. (See, e.g., *People v. Semaan* (2007) 42 Cal.4th 79, 82-83; *People v. Creath* (1995) 31 Cal.App.4th 312, 314; see also § 484e, subd. (d).) The amount received by or value to the defendant, rather than the loss to the victim, may be determinative of the degree of theft. (*People v. Ross* (1972) 25 Cal.App.3d 190, 195.) Under Cataroja's theory, the theft of credit cards could never give rise to a grand theft charge regardless of the amounts fraudulently charged on the cards.

A review of the record pursuant to *Wende, supra*, 25 Cal.3d 436 and *Anders, supra*, 386 U.S. 738, including the possible issues referred to by Cataroja and his appellate counsel, has disclosed no reasonably arguable appellate issue. Competent counsel has represented Cataroja on this appeal.

DISPOSITION

The judgment is affirmed.

McCONNELL, P. J.

WE CONCUR:

BENKE, J.

AARON, J.